IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/04/2003

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THE HONOURABLE MR.JUSTICE K.GNANAPRAKASAM

CRP.No.1905 of 1998

Rajammal ..... Petitioner

-Vs-

1.Periyanayagam
2.Radhamani
3.Susila
4.Palaniappa Nadar
5.Minor Singaravelu
6.Kanagambal ..... Respondents

For Petitioner :: Mr. D. Shivakumaran

For Respondents :: No appearance

Revision Petition filed against the common order and judgement and decreetal order, dated 26.7.1996 in IA.No.923/1985 in OS.No.14/1987, on the file of the Additional Sub Court, Salem.

:ORDER

1.The revision petitioner, who is the plaintiff in OS.No.1987/1980 on the file of the District Munsif Court, Salem, which suit was renumbered as OS.No.14/1987 and taken on the file of the Subordinate Judge, Salem, filed the suit for partition and a preliminary decree for partition and allotment of 1/5th share of the plaintiff was passed on 9.4 .1981. Subsequently, the petitioner/plaintiff applied for final decree in IA.No.923/1985, before the Sub Court, Salem. By that time, one minor Singaravelu and Kanagambal have filed a suit in OS.No.922/1984 , before the Sub Court, Salem for partition and the same was pending. Yet another suit in OS.No.172/1987 before the Sub Court, Salem was filed by one Rajaratinam for declaration and the same was also pending. The original suits in OS.No.922/1984 and OS.No.172/1987 were taken together along with IA.No.923/1985 in OS.No.14/1987 by the Subordinate Judge, Salem, which court by judgement and decree dated 26.7.1996 dismissed the suits in OS.No.922/1984 and OS.No.172/1987 and also dismissed IA.No.923/1985 in OS.No.14/1987. As against the same, the petitioner/plaintiff in IA.No.923/1985 in OS.No.14/1987 has preferred this civil revision petition.
2.For the purpose of disposing of this civil revision petition, few facts are necessary, which are narrated here under:-

One Senniappa Nadar had his 1st wife, Kunjammal, through whom he had a son and a daughter, viz. Thavasimuthu and Periyanayagam, who died in or about 1947 and after the death of Kunjammal, Senniappa Nadar married Rajammal as 2nd wife, through whom, he got two daughters, viz. Rajammal and Susila. Thavasimuthu died leaving behind him, his wife Kanagambal and a son Singaravelu, who are the plaintiffs in OS.No.922/1984. The plaintiff in OS.No.14/1987, Rajammal is the 2nd wife of Senniappa Nadar. Radhamani and Susila, who are the defendants 3 and 4 in the said suit are the daughters of Rajammal, the plaintiff in the said suit. The plaintiff in OS.No.172/1987, Rajaratinam is the purchaser of certain items of the properties, after filing of the suit by Rajammal in OS.No.14/1987, which suit was filed for declaration and for possession of the properties purchased by him.

3.OS.No.922/1984 and OS.No.172/1987 and IA.No.923/1985 in OS.No.14/ 1 987 were all tried together by the court below and both the original suits and the application for passing of final decree were all dismissed.

4.IA.No.923/1985 in OS.No.14/1987, which was filed by the revision petitioner for passing of final decree, was dismissed on two grounds, viz. (1) Periyanayagam, sister of Thavasimuthu is said to have been died and her legal representatives were not brought on record as parties to the final decree proceedings and (2) Rajaratinam, the subsequent purchaser, who is the plaintiff in OS.No.172/1987 was not made as a party to the final decree proceedings.

5.With regard to 1st ground, the learned advocate for the revision petitioner would contend that factually, the information furnished to the trial court that Periyanayagam is died, is wrong. The learned advocate for the revision petitioner has pointed out that the notice sent to Periyanayagam, who is the 1st respondent in the civil revision petition, was received by her and incidentally pointed out that the bailiff made an endorsement on the notice served upon Periyanayagam on 25.3.2000 and the bailiff's endorsement is dated 27.3.2000. This court also perused the service of notice in the civil revision petition and it is made out that Periyanayagam received the notice on 25.3.200 0 and the same was reported by the bailiff on 27.3.2000. As such, the information furnished to the trial court that Periyanayagam is died is wrong and that therefore, the question of bringing the legal representatives of Periyanayagam does not at all arise in this case.

6.As far as the 2nd ground that Rajaratinam was not made as a party to the final decree proceedings is concerned, it is contended on behalf of the revision petitioner that the suit in OS.No.1987/1980 was filed in the year 1980 itself, but, whereas Rajaratinam, the plaintiff in OS.No.172/1987 appears to have purchased the property only on 24.2.1981, under Ex.B2, i.e. after filing of the suit. It is submitted that the very purchase of the property by Rajaratinam is hit by Section 52 of the Transfer of Property Act and that therefore, he is bound by the decree that would be passed in the said case.

7.Section 52 of the Transfer of Property Act reads as under:-

"Transfer of property pending suit relating thereto:- During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under the

decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose."
This section is so clear that it would operate during the pendency of any suit before any court. The explanation to this section also clearly indicates that "Pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction."
8.It is, therefore, clear that the section starts to operate or commence from the date of presentation of the plaint itself. In our case, the suit in OS.No.1987/1980 was filed in the year 1980 and Rajaratinam appears to have purchased only on 24.2.1981 and that therefore, his purchase is hit by Section 52 of the Transfer of Property Act and therefore, he is not a necessary party even to the final decree proceedings.
9.The petitioner also relied upon the case of Bakthavatsalam Vs. Anjapuli and 5 others (2001-1-CTC-19), wherein it was held, "10. It is clear that a person is not to be added as a defendant merely because he or she would be incidentally affected by the judgement. The main consideration is whether or not the presence of such a person is necessary to enable the court to effectually and completely adjudicate upon and settle and questions involved in the suit. If the question at issue between the parties can be worked out without any one else being brought in, the stranger should not be added as a party. In the light of the language used in Order 1, Rule 10(2) CPC as well as various decisions and in the light of factual position in our case that preliminary decree has already been passed and application for passing of final decree is pending before the court below, I am of the view that purchasers of properties during the pendency of the suit are neither necessary nor proper parties inasmuch as they would be bound by the decree in the suit in view of the principle enunciated in Section 52 of the Transfer of Property Act..... It is settled law that any alienation subsequent to the filing of the suit is hit by the doctrine of lis pendens. The subsequent purchasers are aware of the proceedings and they are definitely bound by the decision in the suit and the proceedings." (Emphasis given)
10.It is, therefore, quite clear that Rajaratinam, who was the subsequent purchaser of the properties after filing of the suit, is not a necessary and proper party to the suit and the order passed by the trial court that as he was not impleaded as a party to the final decree proceedings, dismissed the said petition, is vitiated and the same is liable to be set aside and accordingly, it is set aside.
11.In the result, the civil revision petition is allowed and the final decree proceedings in IA.No.923/1985 in OS.No.14/1987 stands restored and the trial court is directed to proceed with the final decree proceedings, and dispose of the same, in accordance with law. No costs.

Index: Yes
Web: Yes
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To:

1. The Additional Sub Judge, Salem (with records)

2.The Record Keeper, VR Section, High Court, Madras